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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

Supreme Court No. 1495

Court of Appeals No. 19,715

ANTHONY JOSEPH CIMINI,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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WO. 1-6750—WO. 1-6751

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Petitioner, Anthony Joseph Cimini, hereby petitions the Supreme Court for a rehearing of its order denying the petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit. Petitioner's reasons are as follows:

I.

In his original petition for Writ of Certiorari, petitioner noted that in the Court of Appeals he challenged the quality of the representation he received at trial, although the point was not raised here as a reason for granting the Writ (Petition for Certiorari, page 9). Petitioner's trial counsel made no request for instructions to the jury. He took no exceptions to the charge of the court nor the instructions the court gave supplementally. He made no motion for pretrial discovery. In fact, none of the points petitioner's counsel raised in the Court of Appeals were properly preserved for appellate review by his trial counsel. As a result, petitioner's claims of error in the Court of Appeals were given only the limited review provided by the "plain error" provisions of Rule 52, F.R. Cr. P.

This court has explored the right to counsel in other cases involving the obligation of a State to provide counsel. Recently it went into the adequacy of representation provided by the State. *Chambers v. Maroney*, — U.S. —, decided June 22, 1970.

But, so far, this court has been completely silent on the obligations of the trial and the appellate courts when the record, as here, demonstrates inadequacy of representation by retained counsel. This case thus presents the question of whether the Court of Appeals adequately reviewed petitioner's trial when it limited its holding to a finding that petitioner's trial was "devoid of plain error".

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II.

Prior to trial, the government disclosed that the defendant had been the object of an "electronic surveillance" (Tr. p. 4). No motion was made on behalf of petitioner for a hearing to determine whether the prosecution was aided by such electronic surveillance. On the basis of the record alone, and particularly in the light of the inadequate representation that petitioner received generally, it cannot be said that he has waived whatever rights he may have had to disclosure of the details of the electronic surveillance and appropriate sanctions to vindicate his constitutional rights that may have been violated. Cf. *Henry v. Mississippi*, 379 U.S. 443.

At the very least, this court should grant certiorari for the purpose of remanding the case to the trial court to allow petitioner an opportunity for a hearing on the question of illegal electronic surveillance. *Alderman v. United States*, 394 U.S. 165; *Hoffa v. United States*, 387 U.S. 231.

Respectfully submitted,

PHILIP A. GILLIS
Attorney for Petitioner

July 24, 1970

CERTIFICATE OF COUNSEL

The undersigned hereby certifies to this court that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58, Paragraph 2 of the Rules of this court.

PHILIP A. GILLIS
Attorney for Petitioner

July 24, 1970